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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

THORNTON *v.* COMMONWEALTH.

Jan. 18, 1912

[73 S. E. 481.]

1. Indictment and Information (§ 119*)—Surplusage.—Where an indictment charged an officer of a bank with a violation of Code 1904, §§ 1169, 1170, requiring banking corporations to render statements to the Corporation Commission, and punishing any banking officer making a false statement, an allegation charging a failure to comply with section 1160, requiring the directors once in three months to examine the moneys of the bank, and settle the cashier's accounts, must be treated as surplusage on demurrer.

[Ed. Note.—For other cases, see Indictment and Information, Dec. Dig. § 119.* 7 Va.-W. Va. Enc. Dig. 433, 434.]

2. Indictment and Information (§§ 133, 147*)—Defects—Surplusage—Manner of Raising Objections.—Where an indictment contains surplusage, the remedy is by motion to strike the objectionable allegations or by motion to exclude testimony in support thereof, or by an instruction to disregard such allegations and evidence in support of them, but the objection cannot be reached by demurrer.

[Ed. Note.—For other cases, see Indictment and Information, Dec. Dig. §§ 133, 147.*]

3. Criminal Law (§ 1091*)—Bill of Exceptions—Requisites.—Where the body of the evidence was not copied into a skeleton bill of exceptions signed by the judge or attached to the bill, but appeared in separate and distinct papers and in the stenographer's report of the evidence and not identified, the evidence was not a part of the record on appeal.

[Ed. Note.—For other cases, see Criminal Law, Dec. Dig. § 1091.* 5 Va.-W. Va. Enc. Dig. 381.]

4. Criminal Law (§ 450*)—Opinion Evidence—Conclusions of Witness.—On the trial of an officer of a bank for making a false statement of the financial condition of the bank, in violation of Code 1904, §§ 1169, 1170, a question asked a witness for the prosecution, "Taking all your information up to the present time, including your investigation into these books, have you been able to reach a conclusion that [accused] made a true statement as to the condition of this bank?" called

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

for an opinion on an issue for the jury, and the allowance of an answer that the statement was not true was reversible error.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. § 1036; Dec. Dig. § 450.* 5 Va.-W. Va. Enc. Dig. 778.]

Error to Circuit Court, Charlotte County.

F. C. Thornton was convicted of crime, and he brings error. Reversed.

H. D. Flood and W. C. Carrington, for plaintiff in error.

The Attorney General, for the Commonwealth.

LANFORD *v.* VIRGINIA AIRLINE RY. CO.

Jan. 25, 1912.

[73 S. E. 566.]

1. Appeal and Error (§ 548*)—Bill of Exceptions—Ruling on Admission of Evidence—Waiver.—Where no bill of exceptions is taken to the admission of evidence over objection, the objection is considered as having been waived.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 2433-2440; Dec. Dig. § 548.* 5 Va.-W. Va. Enc. Dig. 361.]

2. Railroads (§ 102*)—Action to Require Construction of Crossing—Evidence—Testimony of Commissioners.—In an action under Code 1904, § 1294b, cl. 2, by an owner across whose land a railroad ran, to require the construction of an underway crossing from one part of the land to another, evidence by the commissioners, appointed to assess the owner's damages at the time the road was constructed, as to whether they had considered the fact that the owner would be deprived of a surface crossing by reason of a fill, was admissible to explain the report.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 306-314; Dec. Dig. § 102.* 14 Va.-W. Va. Enc. Dig. 291.]

3. Railroads (§ 102*)—Action to Require Construction of Crossing—Construction of Statutory Provision.—Code 1904, § 1294b, cl. 2, which requires every railroad passing through the lands of any person to provide a suitable "wagonway across" its road, to be constructed on the written request of the owner to an officer or agent of the company, at a point designated by the owner, and that, if the company refuse to construct such way, the owner may appeal to the circuit court for the appointment of commissioners to determine whether the wagonway should be constructed, their report to be confirmed, "unless good cause is shown against it by the company," considered with section 1294b, cl. 3, which in dealing with the crossing of one railroad by another uses only the word "crossing," and sec-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.